

P.197.33

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**DIVISION OF WATER RIGHTS**

**ORDER**

APPLICATION 28469 PERMIT 19733 LICENSE

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE**

**WHEREAS:**

1. Permit 19733 was issued to Virgil L. Mortensen, Eugene R. Mortensen, and Milton G. Mortensen on January 3, 1986 pursuant to Application 28469.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

**NOW, THEREFORE, IT IS ORDERED THAT:**

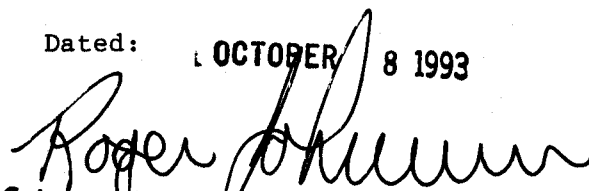
1. Condition 9 of the permit be amended to read:

COMPLETE APPLICATION OF THE  
WATER TO THE PROPOSED USE  
SHALL BE MADE ON OR BEFORE

December 31, 1998

(0000009)

Dated: **OCTOBER 8 1993**

*for*   
Edward C. Anton, Chief  
Division of Water Rights

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19733

Application 28469 of Virgil I. Mortensen, Eugene R. Mortensen, and  
Milton G. Mortensen  
P. O. Box 27, Hyampom, California 96046

filed on June 7, 1985, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:	Tributary to:
Big Creek	South Fork Trinity River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
West 3,600 feet and North 800 feet from SE corner of Section 8	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	8	3N	6E	H

County of Trinity

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Power	Powerhouse located within SW $\frac{1}{4}$ of SW $\frac{1}{4}$	10	3N	6E	MD	

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 100 cubic feet per second by direct diversion to be diverted from October 1 of each year to July 30 of the succeeding year. (0000005)
6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)
8. Construction work shall be completed by December 1, 1989. (0000008)
9. Complete application of the water to the authorized use shall be made by December 1, 1990. (0000009)
10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)
11. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
- The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)
13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)
14. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)

15. The equivalent of the continuous flow allowance for any 14-day period may be diverted in a shorter time, provided there be no interference with other rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed. (0000027)
16. Water diverted under this permit is for nonconsumptive use and is to be released to Big Creek within SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 10, T3N, R6E, HB&M. (0000111)
17. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued license are subject to depletions resulting from future upstream appropriation for domestic and stockwatering uses within the watershed. Such rights and privileges under this permit may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent that the Board determines, pursuant to Water Code Sections 100 and 275, that the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittee or licensee of an application for any such future upstream appropriation and the opportunity to be heard; provided, that a hearing, if requested, may be consolidated with the hearing on such applications. (000I001)
18. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained, [including compliance with any applicable Federal Energy Regulatory Commission requirements.] (000J001)
19. For the protection of instream resources, the permittee shall at all time released past the point of diversion 8 cubic feet per second or the natural flow of the stream, whichever is less. (0140500)
20. The streamflow releases shall be monitored by a recording gage located immediately downstream from the diversion site. The daily record of maximum and minimum flows shall be provided to the California Department of Fish and Game annually by December 31 of each year for the preceding October 1-September 30 water year. (0100500)
21. Permittee shall, in consultation with the California Department of Fish and Game, design, implement, maintain and evaluate a fishery habitat improvement plan designed to maintain and enhance steelhead trout habitat in Big Creek downstream from the first migration barrier. All aspects of the fishery habitat improvement plan, including preconstruction baseline data acquisition, physical design of the project, and post-construction monitoring studies shall be approved in writing by the California Department of Fish and Game prior to implementation. (0400500)
22. In order to prevent fish stranding, changes in the amount diverted shall be gradual, at a rate not to exceed 30% of the streamflow per hour. (0060500)
23. The project shall incorporate a mechanism that will automatically and immediately stop the diversion of water in case of a pipeline rupture or ditch washout. (0350500)
24. The project shall provide for automatic bypass of water past the turbine in the event of load rejection. (0050500)
25. The diversion structure shall incorporate a screen to prevent entry of fish into the conduit. The fish screen design shall be approved by the California Department of Fish and Game prior to project construction. The screen shall be approved in writing by the Department of Fish and Game prior to project operations. (0400500)
26. The powerhouse tailrace shall be designed and constructed in such a way that it does not attract or allow upstream migrating salmon or steelhead into the area of turbine discharge. The tailrace design shall be approved by the Department of Fish and Game prior to the beginning of project construction; the tailrace shall be approved by the Department, in writing, prior to the beginning of project operations. (0400500)

27. Sluicing of accumulated sediments through the diversion structure shall be conducted only under flood flows greater than the five percent annual exceedence flow, or with the written permission of the Department of Fish and Game following notification by the project operator. If flows are considered by the Department to be insufficient to carry the sediment out of the stream, sediment removal shall be accomplished by its removal to a site approved in advance by the Department and the Regional Water Quality Control Board. (0400500)

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JANUARY 3 1986

STATE WATER RESOURCES CONTROL BOARD

*Shoy Johnson*  
Chief, Division of Water Rights